

# State of Colorado



**Bill Owens**  
*Governor*

**John Zakhem**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
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## **AGENDA PUBLIC BOARD MEETING April 18, 2006**

A public meeting of the State Personnel Board will be held on **Tuesday, April 18, 2006, at the Colorado State Personnel Board, 633 17<sup>th</sup> Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by April 12, 2006.

### **I. REQUESTS FOR RESIDENCY WAIVERS**

#### **A. April 1, 2006 Report on Residency Waivers**

Reports are informational only; no action is required.

### **II. PENDING MATTERS**

There are no pending matters before the Board this month.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

There are no Initial Decisions or other Final Orders of the Administrative Law Judges or the Director on appeal before the Board this month.

### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

#### **A. Olukemi Olawore v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, State Personnel Board case number 2006G049.**

Complainant, a probationary Nurse II employed by the Department of Human Services, Colorado State Veterans Home at Fitzsimons, filed a petition for hearing on February 2, 2006, arguing that the termination of her employment was wrongful and alleging discrimination based on color and retaliation.

Respondent argues Complainant failed to meet the burden showing that valid issues exist that merit a full hearing and that Complainant's allegations of discrimination based on color and retaliation are without merit, and therefore, the Board is without jurisdiction

to grant a hearing.

On April 5, 2006, the Administrative Law Judge issued a Preliminary Recommendation, recommending that Complainant's petition for hearing be denied.

B. Dava Portales v. Department of Labor and Employment, Unemployment Insurance Section, State Personnel Board case number 2006G045.

Complainant, a Labor and Employment Specialist II in the Division of Employment and Training's Unemployment Insurance Program, Department of Labor and Employment, filed a petition for hearing on January 19, 2006, alleging that the appointing authority's decision to uphold Complainant's transfer to another position in UI was arbitrary, capricious, contrary to rule or law, punitive in nature, and discriminatory based on gender. Complainant argues that she is not responsible for the "improper and unacceptable" environment in her old unit and that she has been denied the right to defend herself against slanderous statements and the right of equal protection provided to her as a citizen under Article II of the Colorado Constitution.

Respondent counters that the decision to transfer Complainant was not a corrective or disciplinary action, Complainant's supervisor was required to attend training on management techniques in an effort to resolve the ongoing issues surrounding low morale and negative work atmosphere, and decisions made with regard to Complainant and her supervisor were business management decisions based on the recurring theme of preferential treatment of Complainant.

On April 6, 2006, the Administrative Law Judge issued a Preliminary Recommendation, recommending that Complainant's petition for hearing be granted.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

A. John K. Williams v. Regents of the University of Colorado, University of Colorado System Office, Procurement Service Center, State Personnel Board case number 2005B081 (March 15, 2006).

Complainant, a purchasing agent, appealed his disciplinary termination, seeking reinstatement, back pay, benefits, and attorney fees and costs. After hearing, the ALJ concluded that Complainant committed most of the acts for which he was disciplined, including providing poor customer service with respect to the tote bag requisition, the Veritas Software requisition, and the Bear Creek Recreation Center sound system requisition. In addition, the ALJ found that Complainant was deliberately insubordinate in his actions of speaking to a co-worker for ten minutes immediately after he was told to limit conversations with that co-worker and that he was late to work, despite an agreement he entered into regarding the issue of timeliness. In affirming Respondent's disciplinary termination of Complainant, the ALJ concluded that Respondent's action was not arbitrary, capricious, or contrary to rule or law; the discipline imposed was within the range of reasonable alternatives; and attorney fees are not warranted.

B. Kenneth W. Robinson v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2006B007 (March 21, 2006).

Complainant, a correctional security officer, appealed his disciplinary five percent pay reduction for three months, seeking rescission of the pay reduction and reimbursement of the amount deducted from his paycheck. After hearing, the ALJ determined that Complainant committed the acts upon which discipline was based, including violating CMHIP Policy 16.15, Adult Patient Abuse/Neglect, which defines Patient Abuse as "any

behavior by an employee that is anti-therapeutic, non-professional and/or affects the patient detrimentally.” His behavior included failing to keep his emotions in check, escalating the situation by failing to utilize the five steps mandated by verbal judo, and using unwarranted force with a patient by intimidating, traumatizing, and pushing the patient toward a wall, causing his head to bump the wall, resulting in a small bruise. In affirming the disciplinary pay reduction, the ALJ found that Respondent's actions were not arbitrary, capricious or contrary to rule or law.

- C. Frank Sarek v. Department of Corrections, State Personnel Board case number 2006B040 (April 3, 2006).

Complainant, an academic teacher, appealed his disciplinary termination from Respondent, seeking reinstatement, back pay, and attorney fees and costs. After hearing, the ALJ concluded that Complainant committed the act for which he was disciplined, which was sleeping while on duty on August 18, 2005. However, the ALJ also found that while the appointing authority gave candid and honest consideration to the evidence he gathered before exercising his discretion, he failed to gather all of the evidence. In addition, during the Board Rule 6-10B meeting, Respondent failed to provide Complainant with the date of the allegation with which he was charged and failed to disclose the source of that allegation, thus depriving him of an opportunity for a meaningful hearing before he was terminated. Although the discipline imposed was within the range of reasonable alternatives, the ALJ deemed Respondent's actions to be arbitrary, capricious, or contrary to rule or law, and awarded attorney fees, full back pay, and benefits from the date of his termination until the last day of his evidentiary hearing to Complainant.

## **VI. REVIEW OF THE MINUTES FROM THE MARCH 21, 2006 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MARCH 21, 2006 PUBLIC MEETING:**

- A. Jeckonias N. Muragara v. Department of Revenue, Division of Motor Vehicles, Driver Control Section, State Personnel Board case number 2006B001.

The Board voted to adopt the Dismissal Order.

- B. Scott Horak v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2005G090.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- C. Arthur Robinson v. Regents of the University of Colorado, University of Colorado at Denver & Health Science Center, College of Architecture and Planning, State Personnel Board case number 2005G008.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- D. Donna Joseph v. Department of Human Services, Division of Disability Determination Services, State Personnel Board case number 2005G093.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing on grounds that Complainant did not establish

that the appointing authority acted arbitrarily or capriciously or that there was a hostile work environment. In addition, Complainant's claim of discrimination was beyond the scope of her grievance and may not be considered.

- E. Susan Nickolette v. Department of Corrections, State Personnel Board case number 2005G097.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- F. Beverly Linden-Lowell v. Department of Transportation, State Personnel Board case number 2005G115.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- G. Eric Brunner v. Department of Corrections, State Personnel Board case number 2006G044.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

#### **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

#### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

##### **A. ADMINISTRATIVE MATTERS**

- Budget Report and Revenue and Expense Report
- Cases on Appeal to the Board and to Appellate Courts
- Web Site Statistics: January 2006 - 36,484; February 2006 - 47,797
- DOC Audit Report

##### **B. OTHER BOARD BUSINESS**

- Staff Activities
  - Office construction

##### **C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

#### **X. PROPOSED LEGISLATION AND/OR RULEMAKING**

#### **XI. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the March 21, 2006 Executive Session
- C. Other Business

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**NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>May 16, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>June 20, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>July 18, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>August 15, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>September 19, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>October 17, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>November 21, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>December 19, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>